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5 UNITED STATES DISTRICT COURT
6 DISTRICT OF NEVADA
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8 CHARLES EDWARD HUEBLER,

9 *Petitioner,*

10 vs.

11 LEONARD VARÉ, *et al.,*

12 *Respondents.*
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3:05-cv-00048-RCJ-VPC

ORDER

14 This stayed habeas matter comes before the Court on petitioner's motion (#55) to
15 reopen, which is not opposed.

16 IT THEREFORE IS ORDERED that petitioner's motion (#55) to reopen is GRANTED,
17 that the stay is LIFTED, and that this matter hereby is REOPENED.

18 IT FURTHER IS ORDERED that respondents shall file a response to the amended
19 petition (#28) within **sixty (60) days** of entry of this order. **Any response filed shall comply**
20 **with the remaining provisions below, which are tailored to this particular case based**
21 **upon the Court's further screening of the matter and which are entered pursuant to**
22 **Habeas Rule 4.**

23 IT FURTHER IS ORDERED that any procedural defenses raised by respondents in
24 response to this order shall be raised together in a single consolidated motion to dismiss. In
25 other words, the Court does not wish to address any procedural defenses raised herein after
26 the reopening of the matter either in *seriatum* fashion in multiple successive motions to
27 dismiss or embedded in the answer. Procedural defenses omitted from such motion to
28 dismiss will be subject to potential waiver. Respondents shall not file a response in this case

1 that consolidates their procedural defenses, if any, with their response on the merits, except
2 pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
3 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall do
4 so within the single motion to dismiss not in the answer; and (b) they shall specifically direct
5 their argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*,
6 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses, including exhaustion,
7 shall be included with the merits in an answer. All procedural defenses, including exhaustion,
8 instead must be raised by motion to dismiss.¹

9 IT FURTHER IS ORDERED that, in any answer filed on the merits, respondents shall
10 specifically cite to and address the applicable state court written decision and state court
11 record materials, if any, regarding each claim within the response as to that claim.

12 IT FURTHER IS ORDERED that petitioner shall have **thirty (30) days** from service of
13 the answer, motion to dismiss, or other response to file a reply or opposition.

14 DATED: July 9, 2013

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18 ROBERT C. JONES
19 Chief United States District Judge
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26 ¹The Court notes that the stay order provided that the withdrawal of respondents' motion to dismiss
27 prior to entry of the stay expressly was without prejudice to any procedural arguments that respondents might
28 make thereafter. #53. The present order reaffirms that proviso in the stay order, requiring only that all such
procedural arguments that remain pertinent now be advanced in a single motion to dismiss following the
reopening of the case.